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RAMON BRAVO, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA -- SAN FRANCISCO**

BRIAN WHITAKER,

Plaintiff,

vs.

RAMON BRAVO, INC.,

Defendant.

Case No. 3:21-cv-03714-JCS

**DEFENDANT'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Jury Trial Demanded

Comes now Defendant RAMON BRAVO, INC. (Bravo) in answer and response to the first amended complaint of BRIAN WHITAKER (Whitaker):

A. ANSWER

Except as expressly admitted below, Bravo denies each and every allegation in the first amended complaint (FAC or complaint). Defendant prays leave to amend as discovery and investigation warrant.

PARTIES

1. Defendant lacks sufficient information to admit or to deny the allegations in Paragraph (¶) 1 and on that basis denies the allegations of ¶1

1 2. Admit the allegations in ¶2.

2 3. Admit the allegations in ¶3.

3 4. Lack sufficient knowledge and information to admit or to deny the bulk of
4 the allegations in ¶4 and on that basis deny.

5 **JURISDICTION AND VENUE**

6 5. Admit.

7 6. Admit that this Court has supplemental jurisdiction out of state law claims
8 which are alleged to arise out of the same operative facts, but deny the balance of ¶6.

9 7. Admit that the real property which appears to be the subject of this action is
10 located in this district (San Mateo County) but deny that Plaintiff has a cause of action
11 against this defendant..

12 **FACTUAL ALLEGATIONS**

13 8. Defendant lacks sufficient information to admit or to deny the allegations in
14 ¶8 and on that basis denies the allegations of ¶8. Defendant is unable to confirm that
15 Plaintiff ever visited Defendant's place of business, whether Plaintiff visited during
16 business hours, whether Plaintiff was directed or assisted by Defendant (or Defendant's
17 staff), and whether the alleged barriers were present.

18 9. Admit.

19 10. Defendant lacks sufficient information to admit or to deny the allegations in
20 ¶10 and on that basis denies the allegations of ¶10.

21 11. Deny.

22 12. Defendant lacks sufficient information to admit or to deny the allegations in
23 ¶12 and on that basis denies the allegations of ¶12. Did Plaintiff inspect every table when
24 he allegedly visit the restaurant or was he directed by staff to the one table that allegedly
25 did not comply? This paragraph is too vague to admit or to deny. Plaintiff has admitted
26 that it was one (1) table with which he allegedly had trouble.

27 13. Deny.

28 14. Deny.

1 15. Deny.

2 16. Defendant lacks sufficient information to admit or to deny the allegations in
3 ¶16 and on that basis denies the allegations of ¶16. Defendant is unable to confirm that
4 Plaintiff ever visited Defendant's place of business.

5 17. Defendant lacks sufficient information to admit or to deny the allegations in
6 ¶17 and on that basis denies the allegations of ¶17. Defendant is unable to confirm that
7 Plaintiff ever visited Defendant's place of business. However, if in fact Plaintiff is a
8 quadriplegic, Plaintiff may in fact generally experience difficulty and discomfort dining
9 in public places.

10 18. Defendant lacks sufficient information to admit or to deny the general
11 allegations in ¶18 and on that basis denies the allegations of ¶18, but denies the specific
12 allegations.

13 19. Deny barriers were encountered, as noted above, though admit that Plaintiff
14 has stated the law correctly.

15 20. Defendant lacks sufficient information to admit or to deny the allegations in
16 ¶20 and on that basis denies the allegations of ¶20.

17 21. Defendant lacks sufficient information to admit or to deny the allegations in
18 ¶21 and on that basis denies the allegations of ¶21. Defendant is unable to confirm that
19 Plaintiff ever visited Defendant's place of business.

20 **CAUSES OF ACTION**

21 22. Incorporate all previous allegations, above, as if fully set forth below.

22 23. Defendant denies the substantive allegations of ¶23 and ¶23a-c, but admits
23 that Plaintiff has stated the law correctly.

24 24. Defendant admits that Plaintiff has stated the law correctly in a general
25 sense.

26 25. Deny.

27 26. Defendant denies the substantive allegations of ¶26, but admits that
28 Plaintiff has stated the law correctly.

1 2. Failure to State Facts.

2 The Complaint, and each cause of action therein, fails to state facts sufficient to
3 make out a cause of action against Defendant.

4 3. Equitable Defenses.

5 The action framed by the subject amended complaint is barred by equitable
6 doctrines, including without limit unclean hands, laches, waiver, and estoppel.

7 4. Failure to State Cause of Action.

8 The Complaint and each cause of action therein fail to state facts sufficient to
9 constitute a cause of action.

10 5. Comparative Fault (Third-Parties).

11 As to the Complaint and each cause of action, un-named third parties were at fault
12 in causing the damages alleged, if any, and should Plaintiff recover anything in this
13 action the amount awarded be reduced or eliminated by said share of fault.

14 6. Failure to Mitigate.

15 The claims for damages are barred because Plaintiff has not alleged, and will be
16 unable to prove, it mitigated damages.

17 7. Insufficient Knowledge.

18 As to the FAC and each cause of action, Defendant lacks information to determine
19 whether additional defenses are available and thus reserves the right to amend this
20 Answer.

21 8. Statutes of Limitations.

22 The claims are barred by applicable statutes of limitations, including without limit
23 sections 335, 335.1, 337, 338, 339, 340, and 343 of the California Code of Civil
24 Procedure.

25 9. Statute of Limitations – ADA.

26 On information and belief, Plaintiff did not visit and was not deterred from visiting
27 the business within two years before the initial complaint was filed.
28

1 10. Standing.

2 Plaintiff's claims are barred because Plaintiff did not visit, and was not deterred
3 from visiting, Defendant's place of business; Plaintiff cannot establish an intent to visit
4 the premises.

5 11. Older Facility.

6 The facility has been occupied for a lengthy time by Defendant and his business.
7 During that time, the facility has not been altered to affect its usability; removal of the
8 alleged barriers, to the extent any exist, is not readily achievable.

9 12. Unreasonable Burden.

10 Plaintiff's requested modifications would pose an undue and unreasonable burden
11 on Defendant.

12 13. Access Provided.

13 Defendant provided access to persons with disabilities by using methods such as
14 customer service.

15 14. Fundamental Alterations.

16 One or more of Plaintiff's requested alterations would fundamentally alter the
17 services and facilities.

18 **D. RELIEF REQUESTED**

19 Wherefore, Defendant herein prays as follows:

- 20 1. Plaintiff take nothing by way of his FAC, or at all;
21 2. Defendant recover costs of suit, including reasonable attorneys' fees; and,
22 3. For such other relief as the Court may find is just and proper.

23 **E. JURY TRIAL DEMANDED**

24 To the extent permitted by law, Defendant hereby demands a jury trial in this
25 matter.

26
27 Date: September 27, 2021

By: Jeffrey B. Neustadt
Counsel for Defendant
RAMON BRAVO, INC.